

COOPERATIVE AGREEMENT

BY AND BETWEEN

The State Department of Health, hereinafter referred to as "Health" and the State Department of Social Services, hereinafter referred to as "Social Services".

WITNESSETH:

WHEREAS, On July 30, 1965, the "Social Security Amendments of 1965" were enacted into law as Public Law 89-97, which among its provisions included the enactment of Title XIX making additional funds available to the states for Medical Assistance provided to eligible individuals; and

WHEREAS, Title XIX makes provision for the submission of a "State plan" by a "single State agency";

WHEREAS, Chapter 256 of the Laws of 1966, added a new Title 11 to Article 5 of the Social Services Law (sections 363, et seq.) promoting the State's goal of making available to everyone regardless of race, age, national origin, or economic standing, uniform high quality medical care, makes provisions for a program of Medical Assistance for Needy Persons, hereinafter referred to as "Medical Assistance" and designated Social Services the "single State agency" for purposes of Title XIX; and

WHEREAS, such a State plan heretofore has been developed by Social Services pursuant to Title XIX and Title 11 and has been submitted to, and approved by, the Health Care Financing Administration (HCFA), the federal agency responsible for administration of Title XIX; and

WHEREAS, Title XIX makes provision for a state agency to be designated to establish and maintain standards for institutions in which recipients of Medical Assistance may receive care or services and permits certain functions and services to be performed under such Title for the "single State agency" by other state or local agencies; and

WHEREAS, Health is the State agency which licenses health institutions, health maintenance organizations and agencies, the primary health service agency, and the agency designed to determine whether providers under Title XVIII of the Social Security Act meet the standards for participation in such program; and

WHEREAS, Chapter 474 of the Laws of 1996 amended Title 11, by designating Health as the "single State agency" having overall responsibility for the Medical Assistance program under Title XIX of the Social Security Act and Title 11 of Article 5 of the Social Services Law; for maintaining the "State plan" for Medical Assistance and submitting amendments thereto to HCFA; and for taking such steps, not inconsistent with law, as may be necessary to obtain and retain approval of such plan by HCFA; and

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WHEREAS, Title 11, as amended, also designates Health as the agency responsible for establishing and maintaining standards for hospital and related services and non-institutional care, reviewing and approving local social services medical plans, establishing a uniform system of reports relating to quality of medical care, reviewing the quality and availability of medical care and services furnished under local social services medical plans, and providing consultative services to providers of care under the plan; and

WHEREAS, Title 11, as amended, designates Social Services as the agency responsible for determining the eligibility for Medical Assistance of applicants therefor, and for auditing payments to providers of care, services and supplies under the Medical Assistance program; and

WHEREAS, Health and Social Services, pursuant to Title 11, as amended, are authorized to enter into such cooperative arrangements as shall be necessary to assure that the purposes and objectives of the Medical Assistance program are effectively accomplished; and

WHEREAS, the Commissioner of Health has the authority, pursuant to Title 11, as amended, to delegate responsibility under Title 11 to other state departments and agencies and to enter into memoranda of understanding as may be necessary to carry out the provisions of Title 11; and

WHEREAS, Health and Social Services have been cooperating in carrying out the directives of the Legislature in implementing the Federal requirements under Title XIX and in defining the respective functions and responsibilities of Social Services and Health under Title 11, as amended;

NOW, THEREFORE, in order to implement the Medical Assistance Program and the Federal requirements applicable thereto, and to define the respective functions and responsibilities of Social Services and Health under such program, to improve access to primary care for all recipients, to assure the delivery of high quality care, to provide comprehensive care for the health needs of all recipients and to improve the cost effectiveness of the Medical Assistance program, Social Services and Health agree as follows:

I. FEDERAL RELATIONS

- A. Health shall be responsible for submitting amendments of the "State plan" to HCFA necessary to implement the Medical Assistance program and for conducting negotiations with respect thereto and appealing denials thereof, in consultation with and with the participation of Social Services, as may be necessary.
- B. Health shall be responsible for submitting Medical Assistance-related demonstration and waiver applications to the federal Department of Health and Human Services (HHS) and/or HCFA. However, Health shall consult with Social Services in the development and revision of any such applications that may affect Social Services' responsibilities under the Social Services Law or this Agreement. Social Services shall assist Health in developing, revising and securing approval of any applications initiated by Health where such applications affect Social Services' responsibilities under the Social Services Law or this Agreement.

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- C. Health shall submit a summary of this Agreement to HCFA in accordance with HCFA requirements.
- D. In the event of a deferral or disallowance of federal Medical Assistance funds associated with the activities of Health or any other State agency, the defense against said Federal action shall be the responsibility of Health. However, Health shall consult with Social Services, and such other State agencies as may be necessary or appropriate, in the development and implementation of such defense and with regard to any appeal, settlement or discontinuance of appeal of any deferral or disallowance related to Title XIX.

II. MEDICAL ASSISTANCE ELIGIBILITY

- A1. Health shall be responsible for establishing and revising the standards and policies relating to persons' eligibility for Medical Assistance and for requiring adherence to the standards and policies relating to persons' eligibility for Medical Assistance by the social services districts of the State.
- A2. Social Services, as the single state agency under Title IV-A of the federal Social Security Act, shall, through the social services districts, be responsible for determining the eligibility of persons for Medical Assistance. Health shall be responsible for determining eligibility for Medical Assistance for residents of the Oxford Home and for individuals who are the fiscal responsibility of the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities.
- A3. Social Services may involve other State agencies in the eligibility determination process through cooperative agreements with the approval of Health.
- B1. Social Services shall have responsibility for maintenance, operation and future systems development of the Welfare Management System (WMS) and associated subsystems. This responsibility includes notification to, and coordination with, Health for all changes to this system. Reasonable accommodation will be afforded to Health to allow development of systems initiatives in consultation with Social Services to support the Medical Assistance Program.
- B2. Health shall have responsibility for maintenance, operation and future systems development of the Electronic Medicaid Eligibility Verification System (EMEVS). This responsibility includes coordination with Social Services for all systems changes. Reasonable accommodation will be provided to Social Services to allow development of systems initiatives to support operation and development of Social Services' programs.
- B3. Health shall have responsibility for maintenance, operation and future systems development of the Medicaid Management Information System (MMIS) and associated systems as defined by the federal General Systems Design (GSD). Social Services shall retain

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responsibility for the Provider Surveillance and Utilization Review System (SURS). Health shall be responsible for notification to and coordination with Social Services of any systems changes to MMIS. Social Services will consult with Health on any Provider SURS initiatives. Reasonable accommodations will be provided to Social Services to support operation and development of Social Services' programs.

- C1. Health shall maintain a system of Fair Hearings in accordance with federal requirements to hear the appeals of applicants for and recipients of Medical Assistance who are adversely affected by the actions of Health or social services districts.
- C2. Under such Fair Hearing system, social services agencies, including local social services districts, shall continue to be responsible for issuing notices of agency action with respect to matters affecting recipient eligibility. Social Services shall continue to receive requests for fair hearings, shall conduct administrative hearings and shall recommend appropriate actions with respect thereto to Health which shall issue the final administrative decisions thereon. Health shall designate appropriate staff of Social Services to issue final administrative decisions on behalf of Health, and to review issued fair hearing decisions for the purpose of correcting any error found in such decisions, including the reopening of a previously closed fair hearing record for purposes of completing such record.

III. MEDICAL STANDARDS AND PROGRAM OVERSIGHT

- A. Health shall be responsible for establishing and maintaining, in conformance with any standards established by HHS, health standards for medical providers, as may be licensed by the State of New York, from which recipients of Medical Assistance may receive medical care or health-related services.
- B. Health and Social Services shall share the responsibility for requiring adherence by providers of medical care and health services to the regulations promulgated by Health concerning the standards of medical care and health-related services, as reflected below.
- C. Health shall, pursuant to the Public Health Law, certify managed care plans and, in consultation with the responsible special needs agency, special needs plans, for participation in the Medical Assistance program.
- D. Health shall periodically review the utilization, appropriateness, availability and quality of medical care and services furnished to recipients of Medical Assistance under the program and shall make such reports as required by law of the findings together with any recommendations in accordance with State law, the federal Social Security Act and regulations promulgated thereunder.
- E. Health shall be responsible for the administration of the Drug Utilization Review Program. Health and Social Services shall share

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the responsibility for conducting medical and drug review activity to control inappropriate utilization identified in conformance with established regulations and policies and commonly accepted medical practice.

- F1. Social Services shall be responsible for conducting audits of managed care providers and other providers of care, services and supplies enrolled in the Medical Assistance program including the responsibility for on-going fraud and abuse monitoring, investigation and referral. In this regard, Social Services shall consult with Health to ensure that such audits are conducted in accordance with Medical Assistance policy as established by Health. Social Services shall maintain a system to review and audit provider performance under the program, to recover inappropriate payments to providers and to assess provider sanctions for program violations, shall maintain a system of provider hearings to review contested audit findings, recoveries, penalties and provider sanctions, shall maintain a system for withholding payments to providers, and shall maintain a system for the final recovery of overpayments and penalties and for sanctioning and excluding enrolled providers for program violations.
- F2. Social Services audit responsibility shall include but not be limited to fiscal audits of providers (including billing audits and audits of rates conducted under Section 368-c of the Social Services Law), audits relating to provider unacceptable practices, other audits which relate to the ability of a provider to continue to participate in the Medical Assistance Program and activities related to Medical Assistance recipient fraud. Such responsibility shall also include the administration of contracts related to Social Services audit and revenue maximization responsibilities.
- G. Social Services shall continue to be responsible for the audit and review of claims paid under the Medical Assistance Program to individuals who are not enrolled as providers.
- H. Social Services and Health shall have joint responsibility for the pre-payment review of claims submitted by providers for payment under the Medical Assistance Program. Such joint responsibility shall include the effectuation of edits on claims for payments pending resolution of the review in conformance with policies and standards of Health. Reasonable accomodation will be provided to Social Services to allow development of systems to support any such initiatives.
- I. Social Services, as part of its audit and fraud control responsibility, shall be responsible for Medical Assistance third party operations and recoveries. Health shall be responsible for third party policy as it relates to Medical Assistance eligibility. Each agency shall consult and coordinate with the other to ensure an effective third party recovery program.

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IV. PROGRAM MANAGEMENT AND ADMINISTRATION

- A. Health shall be responsible for the supervision of the administration, management and overall operation of the Medical Assistance Program.
- B. Health shall be responsible for the establishment of the Medical Assistance delivery network; and recruitment, selection and procurement of providers and managed care plans; provided, however, nothing herein shall prohibit social services districts or groups of districts from procuring providers or managed care plans with the approval of Health.
- C. Social Services shall be responsible for conducting management assessment reviews and audits, and for performing Medical Assistance quality control reviews of social services districts.
- D. Social Services shall assure that medical care and health-related services, under Medical Assistance, be made available in all social services districts to the extent required by law and the regulations of Health and, where Health has determined that sufficient capacity exists in the managed care entities serving a district, assure that recipients receive such care under the managed care program in accordance with the regulations of Health.
- E. Health shall be responsible for enrolling medical care providers into the Medical Assistance program, instructing them with respect to participation requirements and assuring payment and shall provide for agreements with providers of services under the State plan, in accordance with applicable Federal requirements. Nothing herein shall preclude Health from delegating to Social Services the responsibility for making an initial determination with respect to provider enrollment applications for those groups or types of providers that Health deems appropriate and for instructing such providers with respect to participation requirements.
- F. Either Social Services or Health may terminate a provider's enrollment under the Medical Assistance program upon advance notice to the provider. Any such termination instituted by Social Services shall be upon advance written notice to and approval by Health. Health and Social Services shall establish a mechanism to provide for the notification to each other of any such terminations.
- G. Health, in consultation with Social Services, shall be responsible for the design, development and operation, either directly or by contract, of the information systems which are necessary to support provider enrollment and payment functions under the Medical Assistance program. Provided, however, that, prior to entering into any contracts with fiscal agents, or extending the current contract, Health shall ensure that such contracts make adequate provision for assuring proper integration of Social Services' responsibilities, including Medical Assistance eligibility determination, fiscal audits, fraud and abuse under this Agreement and information systems shall at a minimum be

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accessible by Social Services and shall permit Social Services, upon notification to Health, to initiate withholding of payments, recoveries, terminations of enrollment and sanctions, as they relate to Medicaid providers. Social Services and Health shall develop procedures for the input and retrieval of information by Social Services related to such system and for the development of reports required by Social Services in its audit and fraud control responsibilities. Social Services shall have the right to disseminate information obtained from such systems in the course of its responsibilities and consistent with federal and state confidentiality requirements.

- H. Social Services shall be responsible for provider fraud control mechanisms including but not limited to "post and clear" and "card swipe". Social Services shall consult with Health during the development of any new initiatives.
- I. Social Services shall be responsible for the development, implementation and monitoring of the Social Services Medical Assistance audit plan. Social Services shall consult with Health in the development of such plan and shall periodically advise Health of the status of all initiatives contained in the plan. All recoveries received by Social Services shall be processed and deposited in a manner to be developed by Social Services and Health.
- J. Social Services shall continue to be responsible for medical support enforcement activities pursuant to the provisions of Title IV-D of the Social Security Act.
- K. Social Services shall continue to be responsible for interaction with local services districts regarding local district Medical Assistance fiscal activities. Such responsibility shall include the processing of administrative and program claims, interception of funds for local district escrow accounts, recoupment of intergovernmental transfer revenue, issuance of disproportionate share payments, and maintenance of local district cost allocation plans.
- L. Health shall be responsible for interaction with other State agencies regarding Medical Assistance claiming and the processing of reimbursement requests. Health shall be responsible for the filing of the Medical Assistance Quarterly Expenditure Report.
- M. Social Services shall be responsible for the administration of the existing training contract with the State University College at Buffalo. Health shall be responsible for all training functions under the contract which are related to Medical Assistance.
- N. Social Services shall be responsible for all Medical Assistance disability determination functions, including establishment of disability policy and, where applicable, review of social services district procedures.

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V. RATES AND FEES

- A. Health shall establish fees, rates and payment methodologies for providers of medical care and health-related services and shall establish the range of acceptable rates of payment for managed care providers, under the Medical Assistance Program. Provided, however, that nothing herein shall be interpreted as affecting the authority of local social services districts or other state agencies to establish rates of payment where such authority existed prior to the date of this Agreement.
- B. Methodologies and levels of payment for physician case management programs, for comprehensive health services programs with special purpose certificates of authority and for special needs plans or programs shall be developed by Health in consultation with the responsible special needs agency.

VI. REPORTS, FORMS AND PROCEDURES

- A. Through cooperative efforts, Social Services and Health shall develop mutually satisfactory forms and procedures for carrying out their respective responsibilities under Title 11 of Article 5 of the Social Services Law and this Agreement. Such forms and procedures shall include those necessary for determining eligibility for Medical Assistance and claiming Federal reimbursement.
- B. Health shall require such reports as are or may be necessary to comply with Federal requirements and Social Services shall do whatever may be necessary to assure that such requirements may be met.
- C1. Health, in consultation with Social Services, shall determine the nature and extent of the information which should be collected from providers and shall design reports required to monitor the health care provided under the Medical Assistance program. Health shall determine the nature and extent of the information which should be collected from providers for the purpose of establishing rates of payment and shall design such reports as are necessary to establish rates of payment and acceptable ranges of payment, including the collection and reporting of encounter data from managed care programs and HMOs. Social Services shall have access to any such information needed to carry out its responsibilities under this Agreement.
- C2. Social Services shall provide advice and assistance to Health in the determination of the nature and extent of information to be collected from and design of reports for social services districts affecting their program and fiscal responsibilities.
- D. In order to effectively monitor the quality and appropriateness of the care provided, to identify patterns of under-utilization or aberrant care practices, to provide information necessary for plan quality assurance and improvement activities, and to streamline multiple reporting activities, Health, in consultation with Social

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Services, shall be responsible for the design and implementation of an encounter data system sufficient to meet the needs of the State agencies and social services districts having responsibility for the implementation of the Medical Assistance program. These responsibilities shall include: identification of key clinical and utilization variables, data collection, and maintenance and training and technical assistance to providers. Social Services shall have access to all such data and information.

- E. Health shall be responsible for obtaining data relating to the quality and availability of medical care and health services furnished under the Medical Assistance program and shall have the responsibility for collection of encounter data for the managed care program. Social Services shall continue to collect and process encounter data from providers currently enrolled in the Medical Assistance program until such time as the universal encounter data set is established, new provider agreements are executed with the providers, or Health has assumed responsibility for enrolling providers into the Medical Assistance program. Social Services shall have access to all such data and information.
- F. Health shall provide encounter data and payment reports to Social Services, at such times and in such manner as may be necessary, to enable Social Services to carry out its functions and its responsibilities to supervise the social services districts under the Medical Assistance program and to carry out its functions and responsibilities with respect to fiscal audits, fraud and abuse, and provider sanctions.
- G. Until such time as Health establishes a formal process for the communication of Medical Assistance policy to social services districts, Health shall have access to existing methods within Social Services for such communications. Communications included under the terms of this paragraph include but are not limited to Administrative Directives, Local Commissioners Memoranda, and the General Information System. Health and Social Services shall cooperate in this regard such that there is no interruption in the flow of Medical Assistance communications to the social services districts. Health shall use best efforts to establish a Medical Assistance policy communications process as soon as practicable.

VII. GRIEVANCE PROCEEDINGS AND APPEALS - RECIPIENTS

- A. As provided for hereinabove and consistent with relevant federal and State law with respect thereto, upon designation by Health, Social Services shall make provisions for hearing appeals by applicants for, or recipients of, Medical Assistance with respect to their eligibility for Medical Assistance and any adverse agency action taken with respect thereto; holding fair hearings on such appeals when hearings are requested; recommending final decisions and determinations; issuing final administrative decisions on behalf of Health through staff designated by the Commissioner of Health; and taking such steps as may be necessary to enforce Health's final determinations and decisions.

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- B. Health, as the single state agency, shall decide and issue final administrative decisions on appeals reviewed or heard by Social Services in accordance with the requirements of the Social Services Law and federal law and regulations, as applicable. Health shall designate appropriate individuals in Social Services to issue final administrative decisions on behalf of the Commissioner of Health and to review issued fair hearing decisions for the purpose of correcting any error found in such decisions, including the reopening of a previously closed fair hearing record for purposes of completing such record. Health delegates to Social Services the responsibility for deciding and issuing those decisions in which Medicaid eligibility is dependent upon or affected by an individual's eligibility for public assistance. Health also delegates to Social Services the authority to respond on its behalf to any correspondence, contacts or inquiries relating to medical assistance hearings which are directed to Social Services, to Health, or to the Commissioner of Health.
- C. Health, consistent with its responsibility under the Public Health Law, this Agreement and the federal requirements therefor, shall assure that recipients, who are enrollees in managed care plans under the Statewide managed care program, shall have access to grievance and appeal procedures regarding services by their respective managed care plans, as specified in section 4403(1)(g) of the Public Health Law, 10 NYCRR 98.14 and the federal laws and regulations governing such procedures.

VIII. MONITORING AND ENFORCEMENT OF AGREEMENT

Except as otherwise specified to the contrary herein, Health, in consultation with Social Services, shall establish and implement policies and procedures reasonably necessary to monitor and evaluate the effectiveness and efficiency of the activities performed under this Agreement and the Medical Assistance program, appropriate to its responsibilities under State law and in accordance with applicable requirements of federal law and regulation.

IX. ADMINISTRATIVE PROCEEDINGS - PROVIDERS

- A. Consistent with its responsibilities hereunder, Social Services shall be responsible and have authority for determining the amount of any restitution or administrative penalty due from a managed care plan or other provider, resulting from receipt of overpayment, fraud, abuse, or an unacceptable practice, and other administrative penalties, including but not limited to suspension, disqualification or limitation of such provider's participation in the program. The Commissioner of Social Services, or designees, shall be delegated to perform any and all of the functions and shall have the authority for all actions described in 18 NYCRR Parts 515, 516, 517, and 518 and for the conduct of administrative proceedings to review such actions as described in 18 NYCRR Part 519 including the authority to render a final administrative decision.

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